> between Verizon and its own Customers as set forth in Verizon's applicable Tariffs.

This language ensures that Cavalier and Cavalier's customers will receive the same treatment as Verizon's customers with respect to directory listing and any errors that may occur.

Cavalier's proposal to impose penalties on Verizon payable to Cavalier when Verizon publishes information provided by Cavalier would lead to perverse economic incentives and results that benefit no one but Cavalier. The emphasis in publishing directories should be on efficiently producing accurate, timely and complete directories. Cavalier's proposal would reward Cavalier for any mistakes Verizon makes. Although Cavalier's position on this issues is consistent with its general proposition that it is unwilling **to** cooperate with Verizon without receiving payment, it is irreconcilable with the goal of publishing accurate directories. Rather than encouraging Cavalier to cooperate with Verizon, Cavalier's proposal would provide Cavalier with strong economic incentives to provide incomplete or misleading directory listing information. It would also financially motivate Cavalier to re-allocate resources to the task of identifying mistakes after publication rather than to identifying and correcting mistakes before publication. Implementing a system whereby either party financially benefits from directories mistakes is not only contrary to law but is also just plain bad policy.

Furthermore, Cavalier's tariffs limit Cavalier's liability to its own customers for directory listing mistakes. For example, Cavalier's Virginia S.C.C. Tariff No. 1 states that "the entire liability for any claim, **loss,** damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the customer for the specific services giving rise to the claim."" Cavalier's tariff further limits its liability for any special, incidental, or

"Cavalier Virginia S.C.C. Tariff No. 1, § 2.1.4 *(G).*

consequential damages including, but not limited to, harm to business, lost revenues, lost profits, lost savings, or other commercial or economic loss."[26] Cavalier also is not liable for inadvertent disclosure of non-published telephone service." Thus, Cavalier proposes *to* assess substantial monetary penalties on Verizon for any mistakes Verizon makes in publishing Cavaliers' customers' directory listings while at the same time its own liability to its customers is severely limited. The Commission should see Cavalier's proposal as the revenue generating scheme that it is and reject the proposal in its entirety.

f) Issue No. 3(f): Database Access

Cavalier describes sub-issue 3(f) as "should Cavalier be allowed to directly input directory listings orders into Verizon's database?" However, neither Cavalier's Petition nor its proposed amendment explains what it means by "directly input". Verizon assumes that Cavalier is proposing a different system than the LSR process described above currently applicable to all CLECs.[28] Again Cavalier misses the applicable legal standard. Verizon is not required to build additional systems and access methods simply because Cavalier requests them. Verizon is required to provide nondiscriminatory appearance and integration of CLEC listings with the same accuracy and reliability as that it provides to its own customers. Verizon satisfies that standard today. Verizon is not required to construct a different mode of access for every CLEC upon request nor should it be. Providing multiple modes and levels of access to numerous carriers would likely reduce overall levels of accuracy as CLECs would have the opportunity to make errors in each others' listings. Migration of customers from one CLEC to another would add additional layers of confusion and opportunities for mistakes. Although Verizon is unsure as

---

[26] *Id.* at § 2.1.4 (F).

"*Id.* at § 3.4.8 (B).

to what Cavalier mean by "direct access," such access applied on a broad scale would likely have significant and adverse consequences.

[28] Cavalier's proposed amendment states that "The parties may, at Verizon's option, negotiate in good faith an arrangement under which Cavalier will have direct, unmediated access to and ability to input, delete, amend and update its listings within Verizon's directory databases . . . ." Cavalier, like any other CLEC, may already accomplish these functions through the LSR process.

<u>ARBITRATION ISSUE 3(a): Verification of Cavalier Directory Listings</u> - Should the responsibilities of the parties for the verification of directory listings be made clearer?

<u>Cavalier's Position:</u> Verizon already sends LVR's in connection with upcoming directories; the issues relate to accuracy and timing. Cavalier is willing either to have Verizon take actual, real responsibilities for checking the accuracy of the directory listings, or to take such responsibility itself. But for the system to work, Verizon needs to state either that it has check – in which case it is responsible for errors – or that it has not.

<u>Verizon's Alleged Position:</u> The directory metrics already address Verizon's accountability.

<u>Verizon's Actual Position and Prouosed Resolution:</u>

Verizon incorporates by reference its response to Issue **3** above.

<u>ARBITRATION ISSUE 3(b): Verizon Verification</u> - Should the party that verities the accuracy of the listings be duly compensated by the other party for errors that are corrected by the reviewing LEC?

<u>Cavalier's Position:</u> If Verizon doesn't want to bother checking LVR's, Cavalier will do so. Logically that function is Verizon's responsibility, since it generates the LVR's based on information provided by Cavalier, and at present Cavalier does not have any direct access to the systems that produce the LVR's. So, if Verizon wants Cavalier to do Verizon's job, that's fine; but it is only appropriate in that case that Verizon compensate Cavalier for that effort.

<u>Verizon's Alleged Position:</u> The directory metrics already address Verizon's accountability.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Verizon incorporates by reference its response to Issue **3** above.

<u>ARBITRATION ISSUE 3(c): Cavalier Verification</u> - Should Cavalier be compensated when it checks for Verizon errors and corrects them only to have Verizon commit a further error?

<u>Cavalier's Position:</u> Cavalier will likely double-check Verizon's LVR's even if Verizon certifies that it has checked them, but given a certification, such double-checking would be at Cavalier's own expense. On the other hand, if Verizon, having certified that it has reviewed the LVR's for accuracy, nonetheless produces LVR's that contain errors, then there should be compensation to Cavalier and/or its customers for those errors. Over time, this system will create reasonable incentives for Verizon to be more accurate in developing the LVR's and in its listings, which is the goal that should control the Verizon directory process, not the goal of having Cavalier do more and more of Verizon's work.

<u>Verizon's Alleged Position:</u> The directory metrics already address Verizon's accountability.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Verizon incorporates by reference its response to Issue **3** above.

<u>ARBITRATION ISSUE 3(d): Galley Proofs</u> - Should Cavalier be allowed to check the accuracy of galley proofs prior to publication of the phone books?

<u>Cavalier's Position:</u> In a project as big as creating a directory, it is important *to* have many levels of checking, including a just-before publication check of the accuracy of the galley proofs. Note that Cavalier is not here proposing *to* charge Verizon either for checking the galley proofs or for any errors found. **By** this stage, we just want *to* be sure there is a system that allows last-minute errors *to* be caught and corrected.

<u>Verizon's Alleged Position:</u> Current LVR and GUI interfaces provide sufficient tools for Cavalier to check customer listings.

<u>Verizon's Actual Position and Prouosed Resolution:</u>

Verizon incorporates by reference its response *to* Issue **3** above.

<u>ARBITRATION ISSUE 3(e): Post Production Metrics/Remedies/Liquidated Damages</u> - Should Verizon compensate Cavalier at a set amount in liquidated damages for errors in the directory caused by Verizon?

<u>Cavalier's Position:</u> **A** Cavalier customer who is not in the directory suffers real harm. There is essentially no legitimate justification that Cavalier can imagine for the situation addressed by this section, **i.e.**, a customer listing included in the LVR but somehow omitted from the final directory. When that occurs, Cavalier incurs a significant loss of customer goodwill, as well as various out-of-pocket costs trying to maintain that goodwill. **As** a result in these circumstances it is completely appropriate for Verizon to make payments to Cavalier to reflect the tangible and intangible costs that Cavalier incurs. Note that these payments would only apply where Verizon has made the error.

<u>Verizon's Alleged Position:</u> Verizon does not make any financial accommodations for its own customers, including credits for telephone service or yellow page ads, and does not feel it should pay CLECs a financial penalty for these errors.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Verizon incorporates by reference its response to Issue 3(c) above.

<u>ARBITRATION ISSUE 3(f): Database Access</u> - Should Cavalier be allowed to directly input directory listings orders into Verizon's database?

<u>Cavalier's Position:</u> The party with actual, operational responsibility for performing a function is the party who should bear the risk of that function being performed improperly. If Verizon would rather not take operational responsibility for getting Cavalier's customer data (address, number, etc.) accurately into directories, and the parties can sort out a way to have Cavalier perform that function, that would **be** fine with Cavalier. In that case, Verizon would not bear the **risk** of error since it would not be performing the relevant functions.

<u>Verizon's Alleged Position:</u> The current directory input/verification is functional and working properly.

<u>Verizon's Actual Position and Proposed Resolution:</u>

Verizon incorporates by reference its response to Issue **3** above.

<u>ARBITRATION ISSUE 4: Compensation for Cavalier Trunking and Transport</u> - Should Cavalier be compensated for the transport of Verizon's traffic from the collocation back to Cavalier's Switches?

> **<u>Cavalier's Position:</u>** Pursuant to FCC rules, and the recent FCC MCI/AT&T/Cox interconnection arbitration decision, issued on July 17,2002, Cavalier may choose a single point of connection (POI) in a LATA. Thus, Cavalier should receive compensation for one-way or two-way trunks provisioned by Cavalier that service Verizon's traffic back to Cavalier's switches. The rates charged by Cavalier will not exceed rates charged by Verizon. Cavalier has further outlined its position in a complaint pending with the Commission.
>
> **<u>Verizon's Alleged Position:</u>** Not known.
>
> ***<u>Verizon's Actual Position and Proposed Resolution:</u>***

Both Verizon's and Cavalier's respective proposals in connection with this issue address each party's financial responsibility associated with Cavalier's selection of a single physical point of interconnection ("POI") in a LATA, but each party's proposal addresses a different "piece" of the interconnecting networks. Verizon's proposal, referred to as its Verizon's virtual geographically relevant interconnection points ("VGRIP") proposal, addresses financial responsibility from a point on Verizon's network to the parties' POI. As explained below, the Commission should adopt Verizon's **VGRIP** proposal, because it fairly requires Cavalier to be financially responsible **for** the increased transport associated with Cavalier's selection of a single POI in a LATA. Cavalier's proposal addresses financial responsibility from the parties' POI to a point on Cavalier's network – its switch.[29] Also as explained below, the Commission should reject Cavalier's proposal, because it is inconsistent with federal law requiring Cavalier to interconnect at a point on Verizon's network.

[29] Actually, Cavalier's issue statement discusses financial responsibility from "the collocation location" to Cavalier's switch. Cavalier does not explain this reference, but **Verizon** assumes that Cavalier intends to refer to the POI, which might be a collocation site, but does **not** have to be.

A. The Commission Should Adopt Verizon's VGRIP Proposal.

Verizon's VGRIP proposal[30] recognizes that Cavalier can

- deploy a network that looks very different from Verizon's;
- make use of Verizon's network to serve Cavalier's mix of customers: and
- choose to limit its physical interconnection with Verizon to one point per LATA on Verizon's network.

When Cavalier chooses one physical POI in a LATA, it increases the amount of transport required for the parties to exchange traffic. Verizon's proposal reasonably requires Cavalier to take financial responsibility for this increased transport obligation consistent with precedent from both the United States Court of Appeals for the Third Circuit and the FCC on this issue.

1. Verizon's VGRIP Proposal Allocates Additional Transport Obligations Equitably.

If Cavalier establishes a single POI on Verizon's network in a LATA, Verizon should not be required to assume the additional transport obligations associated with that decision. Otherwise, Verizon could be physically and financially responsible for the transport from each local calling area to one point on the network. To address these concerns, Verizon's VGRIP proposal differentiates between that physical POI – where the carriers physically exchange traffic – and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the "Interconnection Point" or "IP."

Under this proposal, Cavalier may choose to (i) establish an IP or (ii) it may take financial responsibility for the traffic at the "virtual" IP location while still using Verizon's network to take the traffic all the way to the POI. With the first option, Cavalier may choose the

[30] Verizon Attachment IV, Interconnection § 2.1

location of its IPs, where financial responsibility for the traffic passes from Verizon to Cavalier. Cavalier IPs would be "geographically relevant" to the telephone numbers it chooses to assign to its customers. **A** geographically relevant point is usually a collocation arrangement at a Verizon tandem (in **a** multi-tandem LATA), or end office that would serve as the IP for that local calling area.[31]

Once Cavalier selects the location and configuration of its financial demarcation point (the IP), then there are several basic scenarios under which Cavalier could assume financial responsibility for delivery of this traffic to its switch. Cavalier has the choice of (i) purchasing transport from Verizon, (ii) providing its own facilities to transport traffic to its switch, or (iii) purchasing transport from a third party.[32] If Cavalier decides to use Verizon as a transport vendor from its collocation arrangement at Verizon's end office wire center to Cavalier's switch, Cavalier could purchase transport from Verizon pursuant to the provisions of the interconnection agreement (*e.g.*, unbundled network element interoffice facilities, or "UNE IOF"). Thus, Cavalier is able to use Verizon's transport facilities at UNE, or cost-based, rates.

Pursuant to the "virtual" IP option, if Cavalier chooses not to establish an IP at the Verizon end office at which Cavalier collocates, the financial demarcation point – in this case a virtual "IP" – would be at the end office serving the Verizon customer that places the call.[33] If, for example, a Verizon customer originates a call to Cavalier's customer in the same local calling area and chooses not to collocate at the Verizon end office, Cavalier has effectively selected

[31] *See Id.* $2.1.1.1.

[32] Cavalier could also use a third-party's collocation arrangement as its IP.

[33] *See* Verizon Attachment IV, Interconnection §§ 2.1.1.1. ("Cavalier shall **bill** and Verizon shall pay only the End Office Reciprocal Compensation Rate, **less** Verizon's transport rate, tandem switching rate (to the extent traffic is tandem switched) and other costs (to the extent that Verizon purchases such transport from Cavalier or a third party) from the originating Verizon End Office to the receiving Cavalier - IP").

Verizon as its transport vendor for the additional transport associated with Cavalier's POI location. If so, Verizon will transport this traffic from the Verizon customer to the POI, wherever it may be located in the LATA. Under this second VGRIP option, Cavalier need not establish an IF' or change its network architecture. Financial responsibility, however, will still transfer to Cavalier at the "virtual" IF'. Specifically, Cavalier must pay Verizon for the transport from the virtual IP to the POI at TELRIC-based UNE rates. Because Verizon must incur additional transport obligations associated with Cavalier's interconnection choice, Verizon should recover from Cavalier the costs for transport of this traffic from the "virtual IP" – the Verizon end office – to the physical POI.

In either of these scenarios, Cavalier (i) retains the right to locate its physical POI at any technically feasible point on Verizon's network in a LATA, (ii) has a choice about where the IP is located, and (iii) bears only a portion of the additional transport obligation it causes as a result of its interconnection decision. VGRIP does not require Cavalier to build out its network or force Cavalier to mirror Verizon's network. Absent Verizon's proposal, Cavalier has every incentive to maximize transport on Verizon's network at Verizon's expense.

2. VGRIP Is Consistent With *The* Act.

Verizon's proposal is consistent with the FCC's *Local* ***Competition Order,*"** other FCC precedent and the opinion of the Third Circuit. In the *Local* ***Competition Order,*** the FCC held that "because competing carriers must usually compensate incumbent LECs **for** the additional costs incurred by providing interconnection, competitors have an incentive to make economically

[34] ***In re Implementation of the Local Competition Provision in the TelecommunicationsAct of 1996, First Report and Order*** 11 FCC Rcd. 154 99 (1996) ***("LocalCompetition Order").***

efficient decisions about ***where*** to interconnect."[35] Additionally, the FCC determined that **a** CLEC that "wishes a 'technically feasible' but expensive interconnection would, pursuant to § 252(d)(1), be required to bear the cost of that interconnection, including **a** reasonable profit."[36] When read together, ¶¶ 199 and 209 of the ***Local Competition Order*** provide that a CLEC will make efficient decisions about where to interconnect with an ILEC because the CLEC is responsible for the costs of that interconnection. By allocating the incremental interconnection obligations, the VGRIP proposal strikes the right balance between the CLEC's ability to interconnect at one point and the CLEC's duty to "compensate incumbent LECs for the additional costs incurred by providing interconnection."[37]

In addition to the ***Local Competition Order,*** the FCC's ***Pennsylvania 271 Order*** holds that Verizon's interconnection proposal does not violate the FCC's Rules or the **Act.**[38] While the FCC may not have been considering whether the proposed financial allocation should be adopted for an interconnection agreement, it was considering whether such an allocation ran afoul of its rules. Specifically, the FCC observed that it could not "find that Verizon's policies in regard to the financial responsibility **for** interconnection facilities fail to comply with its obligations under the **Act."**[39]

---

[35] ***Local Competition Order,*** ¶ 209.

[36] ***Id.*** at ¶ **199**

[37] ***Id.*** at ¶ **209.**

[38] ***Pennsylvania 271 Order*** at ¶ 100. ***See also Application by Verizon New England Inc., Verizon Delaware Inc., et al., for Authorization to Provide In-Region InterLATA Services in New Hampshire and Delaware,*** WC Dkt. No. **02-157,** Consultative Comments of the Public Service Commission of Delaware, p. **8-9** (July **16,2002)** (noting the FCC's acknowledgment that no current regulation or ruling precludes Verizon's policy of seeking separate physical and fiscal interconnection points).

[39] ***Pennsylvania 271 Order*** at ¶ **100.** The FCC examined Verizon's geographically relevant interconnection point, **or** GRIP, proposal. In GRIP, the interconnecting carrier would establish an interconnection point, IP, in each Verizon local calling area. Thus, the financial demarcation point **for** the interconnection facilities is located in close geographic proximity to the CLEC's customers. The

(continued.. .)

Moreover, the Third Circuit recognized that if a CLEC's choice of POI proved to be expensive for the ILEC, state commissions should consider shifting those costs to the CLEC. In *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*,[40] the court relied upon ¶ 209 from the *Local Competition Order* and held that if WorldCom's POI location proves "more expensive to Verizon, the PUC [Pennsylvania Public Utilities Commission] should consider shifting costs to WorldCom. *See* 11 F.C.C.R. 15499 ¶ 209."[41] Verizon's VGRIP proposal only seeks to recover the additional incremental costs Cavalier's proposal would force Verizon to assume when Verizon transports traffic outside of the local calling area from where the call originated. This proposal is consistent with § 251(d) of the Act, FCC decisions, and federal case law.[42]

Verizon's proposal is not only consistent with relevant federal law but it is also consistent with the decisions of several state commissions. These commissions have recognized that a CLEC's choice of one POI per LATA imposes additional transport obligations on an ILEC.[43] In

difference between the GRIP proposal and the VGRIP proposal is that under VGRIP, Verizon is willing to move that financial demarcation point out to Verizon's tandem (frequently beyond the local calling area) that serves the interconnecting carrier's NPA-NXXs. **Thus,** pursuant to VGRIP, Verizon is willing to share in the additional transport obligation caused by the interconnecting carrier's choice of POI.

[40] 271 F.3d 491 (3d Cir. 2001).

[41] *MCI Telecommunications Corp.,* 271 F.3d at 518; *see also U.S. West Communications. Inc. v AT&T Communications, Inc.*, 31 F.Supp. 2d 839, 853 n.8 (D. Or. 1998).

[42] The FCC is currently addressing the situation presented by Cavalier's proposal in its *Intercarrier Compensation NPRM. See in the Matter of Developing a Unified Intercarrier Compensation Regime.* 16 FCC Rcd. 9610, ¶¶ 112-114 (2001).

[43] *See In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company dba Sprint and Ameritech Ohio,* Arbitration Award, Case Nos. 01-281 I-TP-ARB and 01-3096-TP-ARB, Public Utilities Commission of Ohio, 3-7 (May 9, 2002) *("Global OH Arbitration"); In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996,* Docket Nos. P-140, **Sub** 73, P-646, Sub 7, 7-15, North Carolina Public Utilities Commission (March 9, 2001); *Petition of AT&T Communications of Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications,*
(continued.. .)

fact, in a recent arbitration between Verizon and HTC Communications ("HTC"), the South Carolina Public Service Commission adopted Verizon's interconnection proposal in its entirety.[44]

Cavalier, however, mistakenly asserts that the FCC has found Verizon's VGRIP proposal "contrary to the Act."[45] Setting aside the fact that the order to which Cavalier refers[46] was issued by the Wireline Competition Bureau (the "Bureau") of the FCC, the FCC itself has specifically ruled that Verizon's GRIP proposal does not violate the Act. Federal precedent makes clear that Verizon's VGRIP proposal is consistent with federal law.

The Bureau – a subordinate body of the FCC – issued the ***Virginia Arbitration Order,*** not the **full** FCC. In the ***Virginia Arbitration Order,*** the Bureau emphasized that it "largely restricted [itself] to addressing the issues and the contract language that the parties have directly placed at issue"[47] before the Bureau. In finding for the petitioners in the ***Virginia Arbitration Order,*** the Bureau never held that Verizon's VGRIP proposal violated the Act **or** the FCC's rules. In fact, the Bureau noted that the FCC "declined to find policies similar to GRIPs and VGRIPs violated the Act."[48] The Bureau merely adopted the petitioners' specific proposals rather than Verizon's proposal.[49] Cavalier, however, has placed a different proposal on the table

---

Inc. Pursuant to 47 U.S.C. Section 252, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079, South Carolina Public Service Commission, 19-28 (January 30, 2001).

[44] ***In re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South Inc.***, Order, Docket No. 2002-66-C Order **No.** 2002-450, 55, 58, South Carolina Public Service Commission (rel. June 12, 2002).

[45] Petition at 14.

[46] ***Virginia Arbitration Order.***

[41] ***Virginia Arbitration Order*** at ¶ 35.

[48] ***Id.*** at ¶ **53** n.123.

[49] ***Id.*** at ¶ 53.

with Verizon – one that would require Verizon to provide interconnection in a manner that conflicts with the Act as discussed further below. The Commission must evaluate the proposals at issue in this arbitration.

In this arbitration with Cavalier, Verizon's VGRIP proposal allows Cavalier to identify an IP at the tandem or, when applicable, identifies one IP in a local calling area at the Verizon end office. Nonetheless, if Cavalier chooses to interconnect at only one POI per LATA and designs its network to utilize fewer switches and more transport, Verizon should not be required to shoulder the additional transport obligation caused by Cavalier's interconnection and network design. VGRIP strikes the right balance between locating one POI in a LATA and the additional transport performed by Verizon as a result of that choice. Thus, the Commission should adopt Verizon's proposed Attachment IV, Interconnection **§ 2.1**

B. The Commission Should Reiect Cavalier's Proposal And Clarify That Cavalier May Not Require Verizon To Establish A Physical Point Of Interconnection Outside Of Verizon's Network.

Cavalier's proposed Exhibit C §§ **4** and **21** require Verizon to establish a point of interconnection at Cavalier's facilities.[50] Cavalier's proposed § 21(b) provides that if "Verizon chooses to have Cavalier carry the traffic using Cavalier facilities from any point on or in Verizon's network to the SPOI, then Verizon shall pay Cavalier's tariffed **or** contractually established charges for such functions . . . ."[51] This language assumes that the single point of interconnection will be located somewhere outside of Verizon's network. If the single point of

[50] ***See*** Cavalier Exhibit C §§ 21(a)-(b). Cavalier's proposal allows it to establish a single POI anywhere in the LATA and contemplates that Cavalier will transport Verizon's traffic from Verizon's network to the single POI. ***See id.*** **As** Verizon will explain, the point of interconnection must be ***within*** Verizon's network, not outside **of** it.

[51] Cavalier Exhibit C § 21(b).

interconnection is "on or in Verizon's network" there would be no reason for Verizon to pay Cavalier for transport to the single POI.[52]

Cavalier's proposal is inconsistent with the plain language of the Act. Section 251(c)(2) provides that Verizon, as the ILEC, must provide "for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network."[53] Likewise, pursuant to FCC **Rule** 51.305(a)(2), the interconnection point must be "[a]t any technically feasible point **within the incumbent LEC's network** ...."[54] Put simply, Verizon is only required to offer interconnection on its network; it is not required to build facilities to Cavalier's network in order satisfy its § 251(c)(2) interconnection obligation.

The FCC's reciprocal compensation rules are consistent with its recognition that the CLEC must choose an interconnection point on the ILEC's network, providing for reciprocal compensation to the CLEC beyond the physical POI. Rule 51.701 applies to "reciprocal compensation for ***transport*** and termination of telecommunications traffic between LECs and other telecommunications carriers."[55] Subsection (c) defines "transport" as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) **from the interconnection point between the two carriers to the terminating carrier's end**

[52] Cavalier makes a similar argument to the Commission in Case No. PUC-2002-00089. Like its proposal here, its pursuit of transport compensation in that proceeding is contrary to federal law.

[53] *47* U.S.C. § 251(c)(2)(B)

[54] *47* C.F.R. § 51.305(a)(2) ***(emphasis added).*** The FCC was cognizant of this rule even when it required some build out of facilities to create meet point arrangements. "In a meet point arrangement, the 'point' of interconnection for purposes of sections 251(c)(2) and 251(c)(3) **remains on 'the local exchange carrier's network'** (*e.g.*, main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection." *Local* ***Competition Order at ¶ 553 emphasis added.***

[55] *47* C.F.R. § 51.701(a) ***emphasis added***

office switch that directly serves the called party … ."[56] Thus, the definition of "transport' makes the distinction between the interconnection point, which must be within the incumbent LEC's network pursuant to Rule 51.305(a)(2), and the terminating carrier's end office switch serving the called party.

The FCC's rules do more than specify that when Verizon sends traffic to a CLEC, the CLEC transports that traffic from the interconnection point to its switch. The rules also specify the charges the CLEC may assess for providing that service: the CLEC is entitled to charge reciprocal compensation for transport, which is defined as "the transmission and any necessary tandem switching" of the traffic.[57] Pursuant to Rule 51.711, moreover, those rates must he symmetrical, *i.e.*, they must he "equal to those that the incumbent LEC assesses on the other carrier for the same services."[58] **A** CLEC may charge asymmetrical rates "only if" it proves, based on a cost study, that "a higher rate is justified."[59]

In short, Cavalier cannot require that Verizon he physically or financially responsible for traffic from the POI to Cavalier's switch in any manner other than through assessment of reciprocal compensation in accordance with the FCC's rules. Because Verizon's interconnection proposal is the only one of the parties' respective proposals that does *not* violate federal law, and because it fairly requires Cavalier to be responsible for the increased transport on Verizon's network, the Commission should adopt Verizon's proposed Attachment IV, Interconnection § 2.1 and reject Cavalier's proposed Exhibit C §§ 4 and 21.

---

[56] *Id.* at § 51.701(c) emphasis added.

[57] *Id.*

[58] *Id.* at § 51.711(a)(1).

[59] *Id.* at § 51.711(b).

ARBITRATION ISSUE *5:* No Facilities for UNE T-1s - Can Verizon continue to reject UNE T-1 Orders for "no facilities" as outlined in their current policies?

> Cavalier's Position: Circumstances where Verizon will not establish a T1 UNE are outlined in Verizon Tariff No. 203, Section 2. Otherwise, Verizon must accept and provision the Cavalier order, as it would its own customers. Moreover, the requirement for Cavalier to place three separate orders for the same T-1 circuit is wasteful and discriminatory. Cavalier has raised these issues with Verizon in many forums and has a pending complaint with the Commission over related matters.
>
> Verizon's Alleged Position: The provisioning of UNE Tl's as outlined in the July 2001 industry letter conforms with the Act and requiring Cavalier to submit three orders for one product is necessary and the only method available for Cavalier to order high capacity wholesale services at UNE rates.
>
> ***Verizon's Actual Position and Proposed Resolution:***

Cavalier complains that Verizon rejects orders for unbundled network element ("UNE) T-1 facilities when no facility is available. Verizon, however, has no obligation under the Act to build or create new network elements at the request of a CLEC. The Eighth Circuit Court of Appeals in *Iowa Utils. Bd. v. FCC* made clear that the Act does not require an ILEC to construct a superior quality network on behalf of a CLEC.[60] As the *Iowa Utils.* court explained, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent's existing network - not a yet unbuilt superior one." Under Cavalier's proposal, however, Verizon would have to act as a construction company for Cavalier whenever it is technically possible for Verizon to build the kind of facility Cavalier wants. This is simply not the law, as the FCC has recognized in both its *Local Competition Order*[61] and *UNE Remand Order*.[62] The Commission reached the same

[60] *Iowa Utils. Bd. v. FCC,* 120 F.3d 153,813 (8" Cir.), *appealed **on** other grounds, AT&T Corp. v. Iowa Utils. Bd.,* 119 S. Ct. **721** (1999).

[61] *Local Competition Order* at ¶ 451 ("we expressly limit the provision of unbundled interoffice facilities to *existing* incumbent LEC facilities" (emphasis in original)). There is no logical basis to distinguish UNE T-1's from transport. The underlying principle is the same: an ILEC's unbundling obligation extends only to its existing network, not some yet-to-be-built one.

[62] *In re Implementation of the Local Competition Provisions of the Telecommunications Act **of** 1996 Third Report and Order and Fourth Further Notice **of** Proposed Rulemaking*, 15 FCC Rcd. 3696 (1999)
(continued...)

conclusion in the VA Arbitration decision: "Verizon is also correct that the Act does not require it to construct network elements, including dark fiber, for the sole purpose of unbundling those elements for AT&T or other carriers."[63] If Cavalier wants the benefit of Verizon's retail tariff, which sets forth the terms and conditions for new construction, then Cavalier must pay the retail price for that new construction. This is the same requirement that governs the parties' current interconnection agreement as well as Verizon's interconnection agreements in other states.

Although Verizon is not required to construct network elements at the request of a CLEC, in Virginia, as in other states, Verizon goes beyond its unbundling obligations to provide high capacity loops in certain situations when not all of the necessary facilities are available. For example, when a retail customer is purchasing high capacity services, such as T-1 facilities, from Verizon and wants to transfer to a CLEC, Verizon will transfer those facilities to fill a CLEC order **for** an unbundled high capacity loop. In these cases, Verizon will cross-connect the high capacity loop to the CLEC's collocation arrangement in the central office where that high capacity loop terminates. In addition, in order to fulfill a CLEC's order for a high-capacity loop, Verizon will install high-capacity cards and perform cross connects where there is unused capacity in the central office and at the end user's location, and where there are qualified spare loop facilities between the central office and the end user's location. This means that Verizon will install the appropriate high capacity card in the spare slots or ports of the equipment shelf and perform cross connection work between the common equipment and the wire or fiber facility between the central office and the customer premises. In addition, Verizon will terminate the

---

("*UNE Remand Order*") at ¶ 324 ("we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use").

[63] *Une Remand Order* ¶ 468.

high capacity loop in the appropriate network interface device at the customer premises, such as a Smart Jack or a Digital Cross Connect ("DSX").

Furthermore, if the loop facility between the central office and the end user location is defective or does not meet design standards, Verizon will attempt to correct that defect or design flaw *so* that the loop can support high capacity service. Where there are copper loop facilities more than 12,000 feet long and unused capacity in an apparatus case, Verizon will install a doubler **or** repeater card in the apparatus case so that the loop can support high capacity services.

If Verizon lacks the facilities necessary to provide the unbundled high capacity loop at the time Cavalier places its order, Verizon will check its pending construction jobs. If there is a pending construction job that would make available the facilities necessary to fill Cavalier's order, Verizon will accept Cavalier's order and provide a due date that is based on the estimated completion date of the construction job and the standard interval for Cavalier's order. If Verizon is not able to meet the due date because the construction job is not completed by the estimated due date, the order will be scored as a **miss** in Verizon's on time provisioning measures.

Cavalier incorrectly claims that Verizon's high-capacity loop policy was "declared to be illegal by the hearing officer assigned to review Verizon's Virginia Section 271 application." To the contrary, the Hearing Examiner did not declare Verizon's policies relating to the provision of **DS-1** facilities "illegal." Verizon follows the same practice of unbundling high-capacity loops in Virginia as it does in Pennsylvania, which the FCC found to comply with the requirements of the Act.[64] Like the FCC, the Hearing Examiner found that Verizon's policy for provisioning DS-1s

[64] ***See Pennsylvania** 271 Order* at ¶ 92 ("disagree[ing] with commenters that Verizon's policies and practices concerning the provisioning **of** high capacity loops . . . expressly violate the Commission's unbundling rules"); **see *also New Jersey 271 Order*** at ¶ 151 (recognizing that Verizon's policy in **New** Jersey "is the same policy the Commission found not to expressly violate the Commission's unbundling rules in our Verizon Pennsylvania Order").

complies with the Act: "Verizon Virginia provides local loop transmission from the central office to the customer's premises, unbundled from local switching or other services in accordance with the requirements of Checklist Item 4."[65]

The Hearing Examiner did, however, express some concerns with Verizon's policy on construction of high capacity loops. First, the Hearing Examiner noted that Verizon does not open a cable sheath in order to splice a copper loop into an apparatus case. Verizon does not perform this splicing activity because it is construction work that goes well beyond Verizon's unbundling obligations. This construction work involves multiple steps. First, Verizon would need to prepare an engineering work order and schedule the construction work. Second, Verizon's construction workforce would have to be dispatched to splice selected cable pairs into an apparatus case. Third, Verizon's construction workforce would need to set the work area. Setting the work area would include activities such as opening and preparing a manhole (*e.g.*, pumping out any water and testing for gases) for access to the underground plant or use of a bucket truck to reach the splice enclosure in aerial plant. Fourth, Verizon's construction work force would need to open the cable sheath. Many of these cables contain hundreds of working circuits. These construction activities are performed by a higher craft level than an installation technician. An installation technician typically works with network facilities at an accessible terminal, which does not require splicing skills to open a cable sheath. Because these construction activities go well beyond Verizon's unbundling obligations, Verizon does not open a cable sheath in order to splice a copper loop into an apparatus case.

[65] ***Virginia Hearing Examiner Report*** at 115 ("Based on the Verizon New Jersey Order, Verizon Virginia's 'no facilities' policy is compliant with FCC rules.").

Second, the Hearing Examiner noted that Verizon will provision a residential POTS loop even where it is necessary to add a new drop to a new home, and suggests this policy is at odds with Verizon's policy for high capacity loops.[66] Verizon's policy with respect to the addition of drops is the same for residential POTS service and high capacity loops. Where an aerial drop wire is needed to provision a loop, Verizon will add that drop wire for residential POTS loops and high capacity loops even though it is not required to do so. Where an underground drop wire is needed to provision a loop and unused capacity in a conduit is available, Verizon will add that drop wire for residential POTS loops and high capacity loops even though it is not required to do so.[67]

Third, the Hearing Examiner noted that where CLECs order a high capacity loop and facilities are not available, CLECs need to submit a second order for a special access circuit. Cavalier also raised this issue in its Petition. Verizon has been working cooperatively with CLECs in New York to streamline this process. Verizon conducted a trial with CLECs in New York of an ordering process where Verizon will automatically provision a special access circuit if facilities are not available for the high capacity loop ordered by the CLEC and the CLEC indicates that it wishes to obtain special access when facilities are not available. Verizon expects to implement this process change before the end of this year, which would eliminate the need for the CLECs to submit a second order.

---

[66] *See id.* at 114

[67] Moreover, the Hearing Examiner's comparison of residential POTS loops to high capacity loops is not appropriate. On the one hand, residential POTS loops frequently have a drop wire connecting Verizon's distribution loop facilities to the residential customer premises. On the other hand, high capacity loops are almost always provisioned with cable directly into commercial buildings, not with individual drop wires. As a result, during April, May and June 2002, fewer than one percent of CLEC orders for high capacity loops were rejected for drop or house and riser reasons because no conduit capacity was available.

Cavalier's proposed amendments to the parties' current interconnection agreement, which would require Verizon to build a new or superior network for Cavalier's benefit, are contrary to federal law and should be rejected.